

INTERNAL USE ONLY

10 May 1972

MEMORANDUM FOR THE RECORD

STATSPEC

SUBJECT: Constituent Request for [] OOU Material

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1. This memorandum is prompted by the handling of a constituent request to Senator Buckley for [] Official Use Only material under the Freedom of Information law. For the time being, the issue has been side-stepped with the cooperation of Senator Buckley's office.

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2. [] Associate General Counsel, believes the Agency would not succeed in a court test over the issue under the so-called Freedom of Information Act (5 U.S.C. 552). Further, Agency regulations on 5 U.S.C. 552 specifically state that information marked "For Official Use Only" is not to be denied to the public under the first exemption of the Act: "(b)(1) Specifically requiring by Executive order to be kept secret in the interest of the national defense or foreign policy;"

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3. However, Agency regulations on the Freedom of Information Act appear to be in conflict with [] which states that the OOU control marking is a "dissemination limitation." If information marked "Official Use Only" is not to be denied to "any person" under exemption (b)(1) of the Freedom of Information Act, it is difficult to conceive how its dissemination can be limited under H.R. [] with any sanction of authority. Perhaps "OOU" information could be found to be protected information under Agency authorities in a manner which would be covered under an ^{other} exemption under the Freedom of Information Act, such as (b)(3).

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4. These matters are not for resolution by the Office of Legislative Counsel, but we have an important stake in maintaining our credibility with congressional offices. For some time we have held the line against releasing [] OOU material to members of Congress for constituents. Although such requests perhaps are not technically under the letter of the Freedom of Information law, they certainly fall within its spirit and congressional offices have relied upon our judgment that this information is somehow properly outside the pale of public scrutiny. We even ask the congressional committees and offices that receive the [] OOU material to treat it with confidence and handle it like they would other protected material. Recently we turned

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down a request from Representative Pierre duPont (R., Del.) for the OVO [redacted] books to be used in a course in Latin American studies at the University of Delaware. It is difficult to square this result with the probable administrative outcome of the request from Senator Buckley's constituent if he presses the matter.



Assistant Legislative Counsel

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